UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

U.S. BANK TRUST, N.A. AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST,

Plaintiff

v. **CASE No. _______________**

JAMES R. COURT a/k/a JAMES COURT, SOVEREIGN BANK n/k/a SANTANDER BANK, N.A. and PORTFOLIO RECOVERY ASSOCIATES LLC

Defendants
_____________________________________/

COMPLAINT TO FORECLOSE MORTGAGE

I.

INTRODUCTION

U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust files this complaint to foreclose a certain mortgage given by the Defendant, James R. Court, encumbering the property at 4 Cooke Place, Warwick, Rhode Island. The Defendant defaulted on his obligation to make monthly payments under the mortgage and note which it secures and Plaintiff now seeks to judicially foreclose the mortgage pursuant to R.I. Gen. Laws §34-27-1 and §34-27-3.2(d)(5).

II.

PARTIES

1. Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust ("U.S. Bank"), is a nationally chartered bank organized and existing under the laws of the United

States of America, with a principal place of business at 300 East Delaware Avenue Wilmington, Delaware 19809.

2. Defendant, James R. Court, is an individual who, upon information and belief, resides at 4 Cooke Place, Warwick, Rhode Island, 02888.

3. Defendant, Sovereign Bank n/k/a Santander Bank, is a nationally chartered bank organized under the laws of the United States of America, with a principal place of business at 824 N. Market Street, Suite 100, Wilmington, DE 19801.

4. Defendant, Portfolio Recovery Associates LLC, is a Delaware public corporation with a principal place of business of 120 Corporate Boulevard, Suite 100, Norfolk, VA 23502 and a registered agent located at 222 Jefferson Boulevard, Suite 200, Warwick, RI 02888

III.

JURISDICTION AND VENUE

5. The Court has original jurisdiction over this action involving the Plaintiff's right, title and interest in the subject property pursuant to 28 U.S.C. § 1332. Here, there is complete diversity between the Plaintiff on the one hand and the Defendants on the other. In addition, the amount in controversy is more than $75,000.00 in that the outstanding balance due and owing on the mortgage which Plaintiff now seeks to foreclose exceeds $170,000.00 (see Acceleration letters dated July 28, 2016 attached hereto as Exhibit 7).

6. Venue is proper under 28 U.S.C. § 1391(b)(2) as the Property is located in Rhode Island.

IV.

FACTS

7. The Defendant, James R. Court a/k/a James Court ("Court") acquired title to the property known as 4 Cooke Place, Warwick, RI (the "Property") by Warranty Deed given by Quality Homes, Inc. to James R. Court dated December 22, 2000 and recorded with the City of Warwick Land Evidence Records (the "LER") on December 22, 2000 in Book 3496 Page 14.

8. Court secured a mortgage loan from IndyMac Bank, F.S.B., in the amount of $167,000.00 on October 2, 2006 (the "Loan").

9. This mortgage loan is evidenced by a promissory note in the original principal amount of $167,000.00 dated October 2, 2006, given by James R. Court to IndyMac Bank, F.S.B. (the "Note"). The Note contains an endorsement in blank by IndyMac Bank F.S.B. U.S. Bank is the owner and holder of the Note and it or its designated document custodian has physical possession of the Note. Caliber Home Loans, Inc. ("Caliber"), with principal offices in Irving, Texas, services the loan on behalf of U.S. Bank. A true and accurate copy of the Note is attached hereto as Exhibit 1.

10. The Note is secured by a mortgage given by James R. Court to Mortgage Electronic Registration Systems, Inc. ("MERS") acting solely as nominee for IndyMac Bank, F.S.B. encumbering the Property in the original principal amount of $167,000.00 dated October 2, 2006 and recorded with the LER on October 4, 2006, in Book 6344, Page 20 (the "Mortgage"). A certified copy of the Mortgage is attached hereto as Exhibit 2[1].

[1] As pleadings are filed electronically, the exhibits referred to herein are copies of certified documents. The loan number has also been redacted for the borrower's protection. Undersigned counsel is prepared to produce the original certified documents for the Court's inspection upon request.

11. Title to the property is further encumbered by an open-end mortgage to Sovereign Bank in the original principal amount of $30,000.00, dated September 26, 2007, and recorded with the LER on October 15, 2007 in Book 6696, Page 175. Sovereign Bank is now known as Santander Bank, N.A.

12. Mortgage Electronic Registration Systems, Inc. assigned the Mortgage to OneWest Bank, FSB ("OneWest") by assignment dated October 4, 2011, and recorded with the LER on October 18, 2011, in Book 7567, Page 263. A certified copy of the Assignment is attached hereto as Exhibit 3.

13. Title to the property is further encumbered by an execution in favor of the Defendant, Portfolio Recovery Assoc. in the original principal amount of $415.92 dated April 11, 2014 and recorded with the LER on May 19, 2014 in Book 8177, Page 60.

14. Mortgage Electronic Registration Systems, Inc. as designated nominee for IndyMac Bank, FSB then purported to assign the Mortgage to Ocwen Loan Servicing, LLC by assignment dated June 26, 2014 and recorded with the LER on July 2, 2014, in Book 8202, Page 16.

15. OneWest Bank, N.A. f/k/a OneWest Bank, F.S.B. assigned the Mortgage to Federal Home Loan Mortgage Corporation ("FHLMC") by assignment dated September 18, 2015, and recorded with the LER on September 30, 2015, in Book 8451, Page 266. A certified copy of the Assignment is attached hereto as Exhibit 4.

16. FHLMC assigned the Mortgage to Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by assignment dated June 3, 2016 and recorded with the LER on July 12, 2016 in Book 8615, Page 238. A true and accurate copy of the Assignment is attached hereto as Exhibit 5.

17. Under the terms of the Note and Mortgage, Court was obligated to make monthly principal and interest payments together with a monthly escrow payment as computed by the mortgagee sufficient to pay real estate taxes and hazard insurance premiums in connection with the Property through the November 1, 2036 maturity date of the Loan.

18. Court has defaulted in his monthly payment obligations due under the Note and Mortgage, and the mortgage account with Caliber is now due for the May 1, 2014 payment together with all subsequently accrued but unpaid installments.

19. Pursuant to the terms of the Mortgage, Federal Home Loan Mortgage Corporation as prior holder of the Note and Mortgage, through its attorneys, Korde & Associates, P.C., sent Court a Notice of Default dated November 13, 2015, via certified and first class mail at the Property address. A true and accurate copy of said Notice is attached hereto as Exhibit 6.

20. The default set forth in the November 13, 2015 Notice of Default was never cured.

21. On July 28, 2016, U.S. Bank, through its attorneys, Korde & Associates, P.C., sent Court a Notice of Acceleration via certified and first class mail at the Property address. A true and accurate copy of said Notice is attached hereto as Exhibit 7.

22. On June 16, 2016, Caliber mailed Court a Trial Period Plan (“TPP”) offer letter with a first payment due date of July 1, 2016. As of September 6, 2016, Caliber had not received a response to the offer nor had any of the trial payments been made. Consequently, the offer for the trial payment plan has expired.

23. Additionally, on August 15, 2016, Caliber mailed Court a Trial Period Plan (“TPP”) offer letter with a first payment due date of September 1, 2016. As of December 12,

2016, Caliber had not received a response to the offer nor had any of the trial payments been made. Consequently, the offer for the trial payment plan has expired.

24. Furthermore, on October 14, 2016, Caliber mailed another TPP letter to Court with a first payment due date of November 1, 2016. As of December 12, 2016 Caliber had not received a response to the offer nor had any of the trial payments been made.

COUNT I

FOR DECLARATORY JUDGMENT

25. U.S. Bank re-alleges and incorporates by reference herein the allegations contained in paragraphs 1-24 above.

26. U.S. Bank seeks a judgment from this Court declaring that (a) U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust is the holder of the Note and holder of the Mortgage and is the entity entitled to enforce the default remedies provided for in the Note and Mortgage, including exercise of the power of sale provided for therein (see paragraph 22 of the Mortgage) and (b) that the Defendant, James R. Court, is in default of his obligations set forth in the Note and Mortgage.

COUNT II

FOR DECREE BARRING ALL RIGHTS OF REDEMPTION
AND VESTING TITLE IN THE PLAINTIFF FREE OF ALL CLAIMS

27. U.S. Bank re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-24 above.

28. U.S. Bank seeks a decree of this Court pursuant to R.I. Gen. Laws § 34-27-1 (a) forever barring any rights of redemption which the Defendant may have under the terms of the Mortgage and (b) vesting title to the Property in favor of the Plaintiff, U.S. Bank, free of any and all right, title, interest or claim of each of the Defendants to this action.

COUNT III

FOR AN ORDER OF SALE

29. U.S. Bank re-alleges and incorporates by reference the allegations contained in paragraphs 1-24 above.

30. In the alternative to the relief sought in Count II hereof, U.S. Bank seeks an order of this Court pursuant to R.I. Gen. Laws §34-27-1 or otherwise authorizing and directing U.S. Bank to sell the property at public sale or by such other means and subject to such terms and conditions and with notice to such persons as the Court should direct with such sale culminating in a deed or order vesting title in the successful purchaser free of all rights of redemption on the part of each of the Defendants and otherwise free of any and all other rights, title, interests or claims of each of the Defendants to this action. In relation thereto, U.S. bank further seeks an order allowing it to credit bid up to the amount of the total debt owed to it under the Note and Mortgage at any such public sale.

WHEREFORE, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust ("U.S. Bank") requests that the Court:

(a) Given the equitable nature of a proceeding brought pursuant to R.I. Gen. Laws §34-27-1 the Plaintiff prays that in the event the Defendant, James R. Court, should appear in this action at any time prior to entry of a default against him, the Court enter an order staying proceedings in the case for a period of sixty (60) days to afford the Defendant an opportunity to submit a completed application for loss mitigation to the Plaintiff and for the Plaintiff, in turn, to render a determination of the Defendant's eligibility (or lack thereof) for any available foreclosure alternatives based on such application unless such Defendants should affirmatively decline in a pleading or other document filed with the Court that he does not wish to submit such an application;

(b) Issue a decree determining that the Defendant, James R. Court, is in default of his obligations under the terms of the Note and Mortgage;

(c) Issue a decree determining that the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, is the present holder of the note and the present holder of the mortgage and entitled to enforce the default remedies provided for therein;

(d) Issue a decree forever barring the Defendants from exercising any rights of redemption, if any, provided for in the Mortgage and/or by operation of law and vesting title to the Property in the Plaintiff, U.S. Bank, free of any and all right, title, interest or claim of each of the Defendants or any other person or entity who records a lien or interest in the Property after Plaintiff records a Lis Pendens identifying the within action with the Warwick Land Evidence Records;

(e) In the alternative to the relief sought in the preceding paragraph (d), issue an order authorizing and directing the Plaintiff to sell the Property at public sale or by such other means and upon such notice and to such persons as the Court should direct with such sale culminating in a deed or order vesting title in the successful purchaser free of all rights of redemption on the part of each of the Defendants and otherwise free of any and all other rights, title, interest or claim of each of the Defendants to this action or any other person or entity who records a lien or interest in the Property after Plaintiff records a Lis Pendens identifying the within action with the Warwick Land Evidence Records;

(f) Authorize the Plaintiff to credit bid up to the amount of the total debt owed to it under the Note and Mortgage at any such public sale; and

(g) Grant such other and further relief as the Court deems just and proper.

February 6, 2017

Respectfully Submitted,

U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust
By its Attorney,

/s/ Catherine V. Eastwood
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